

Attach. 2. Moreover, Verizon's achieved flow-through rate for all modes of entry in Maine has ranged from approximately 86.22 percent to 94.46 percent from November 2001 through January 2002. See id. ¶ 63.<sup>64</sup> As in Massachusetts, the total flow-through rates continue to vary by carrier, demonstrating that Verizon's systems are significantly better than the aggregated results suggest on their face. See McLean/Wierzbicki/Webster Decl. ¶ 62; Massachusetts Order ¶ 78; New York Order ¶ 166. And, as the Commission has recognized, the "conclusion that Verizon's systems are capable of achieving high overall levels of order flow-through is reinforced by KPMG's testing," in which KPMG "achieved a flow-through rate of 100 percent." Massachusetts Order ¶ 78.

Finally, Verizon's performance in returning order status notifiers to CLECs is strong. Although the newly adopted order status notifier measurements in use in Massachusetts and Maine are still under development, Verizon has calculated its performance from November through January under the old measurements, and Verizon consistently, with a few minor exceptions, exceeded the 95-percent benchmark for returning provisioning and billing completion notifiers on time. See McLean/Wierzbicki/Webster Decl. ¶ 81; Massachusetts Order ¶ 84; Rhode Island Order ¶ 66. Verizon also has two methods for informing CLECs of orders that are in jeopardy, which are the same methods that it provided at the time the Commission approved Verizon's Massachusetts and Rhode Island applications. See McLean/Wierzbicki/Webster Decl. ¶ 72; Massachusetts Order ¶ 85; Rhode Island Order ¶¶ 67-68.

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<sup>64</sup> The Achieved Flow Through measurements track the percentage of orders that are capable of flowing through that actually do flow through. See Guerard/Canny/Abesamis Decl. ¶ 40.

### 3. Provisioning.

Verizon provisions CLEC orders in Maine on a nondiscriminatory basis using the same systems and processes as in Massachusetts and Rhode Island. See McLean/Wierzbicki/Webster Decl. ¶¶ 82-83. As in the other states for which Verizon has received section 271 authorization, there are no separate provisioning interfaces because provisioning is essentially internal to Verizon once an order is submitted. See id. ¶ 82. Indeed, the systems and processes for most CLEC orders are the same as those used to provision Verizon's retail orders. See id. ¶ 83. As the Commission has concluded, these systems "provide[] parity in provisioning competitors' orders as compared to [Verizon's] retail orders." Massachusetts Order ¶ 90; see Rhode Island Order ¶ 69; see also New York Order ¶¶ 193, 197.

### 4. Maintenance and Repair.

Verizon provides CLECs in Maine with access to the same two maintenance and repair interfaces that it provides in Massachusetts, Rhode Island, Connecticut, and Pennsylvania: the Web GUI and an electronic bonding interface. See McLean/Wierzbicki/Webster Decl. ¶ 86. The Web GUI provides "a requesting carrier . . . access [to] all the same functions that are available to [Verizon's] retail representatives." New York Order ¶ 213. The Electronic Bonding Interface ("EBI") is an application-to-application interface that allows CLECs to connect directly to Verizon's maintenance and repair OSS. See McLean/Wierzbicki/Webster Decl. ¶ 94. As the Commission found in Massachusetts, these interfaces "flow directly into Verizon's back-end OSS and enable competing carriers to perform the same functions, in the same manner, as Verizon's retail operations." Massachusetts Order ¶ 95. From November through January, 16 CLECs in Maine used the Web GUI and one CLEC used the EBI for maintenance and repair. See McLean/Wierzbicki/Webster Decl. ¶ 87.

Competing carriers in Maine already use Verizon's maintenance and repair interfaces in commercially significant volumes. For example, from November through January, CLECs used RETAS — the maintenance and repair system accessed by the Web GUI throughout the former Bell Atlantic footprint — to perform approximately 121,000 maintenance and repair transactions per month across the former Bell Atlantic footprint, including approximately 530 maintenance transactions per month in Maine. See id. ¶ 95.

Verizon's maintenance and repair systems also process trouble reports from CLECs in substantially the same time and manner as Verizon processes reports for its own retail customers. From November through January, Verizon consistently exceeded the established standards for responding to virtually all types of maintenance and repair requests that CLECs submitted using the Web GUI. See id. ¶ 96; see also Massachusetts Order ¶ 96 (relying on comparable or lesser performance); New York Order ¶ 219 (same). Moreover, as the Commission found, KPMG's test in Massachusetts "confirms the satisfactory performance demonstrated by Verizon's performance data." Massachusetts Order ¶ 95. And, because the Maine and Massachusetts systems are the same, the same conclusion applies here as well. See McLean/Wierzbicki/Webster Decl. ¶ 86.

## **5. Billing.**

Verizon uses the Massachusetts and Rhode Island systems to generate billing information in Maine. See id. ¶ 98. These are the same systems that Verizon uses for its own retail operations in all three states. See id.<sup>65</sup> The Commission found that these systems provide

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<sup>65</sup> Verizon's billing systems, which operate throughout its New England region, are currently producing more than 2,300 wholesale bills per month in New England on the Customer Record Information System ("CRIS") (used for billing resale services and unbundled loops) and the Carrier Access Billing System ("CABS") (used for billing other unbundled network elements). See McLean/Wierzbicki/Webster Decl. ¶ 101. Verizon also produces an average of

“nondiscriminatory access to [Verizon’s] billing functions” by providing “competing carriers with [Daily Usage Files] in substantially the same time and manner that Verizon provides such information to itself, and carrier bills in a manner that gives competing carriers a meaningful opportunity to compete.” Massachusetts Order ¶¶ 97-98; Rhode Island Order ¶ 71. Moreover, as the Commission has noted, “KPMG found Verizon’s billing system to be accurate and reliable” in Massachusetts, Massachusetts Order ¶ 98; see Rhode Island Order ¶ 71, and, because Maine uses the Massachusetts billing systems, see McLean/Wierzbicki/Webster Decl. ¶ 98, that conclusion applies here as well.

The Massachusetts, Rhode Island, and Maine billing systems, like those in New York, have long made available to CLECs electronic carrier bills in the Billing Output Specification (“BOS”) Bill Data Tape (“BDT”) format. See id. ¶¶ 101, 105. Accordingly, as the Commission has found, the billing systems here raise none of the same issues that arose in connection with Verizon’s application in Pennsylvania. See Rhode Island Order ¶ 71 & n.198 (noting that, in the Pennsylvania 271 proceeding, “the Verizon Massachusetts billing system[] was applauded”). Moreover, no CLECs complained about the quality of their BOS-BDT bills in the section 271 proceedings in Maine. See McLean/Wierzbicki/Webster Decl. ¶¶ 106-109.

The performance data in Maine demonstrate that Verizon continues to deliver timely and accurate bills to CLECs.<sup>66</sup> For example, from November through January, Verizon consistently

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more than 86 million call records (i.e., Exchange Message Interface (“EMI”) records) each month in New England. See id. ¶ 99.

<sup>66</sup> In the Rhode Island sameness test, KPMG also conducted a stand-alone test of Verizon’s line-loss reports, which identify for CLECs the end-user lines that have migrated from one local service provider to another. See McLean/Wierzbicki/Webster Decl. ¶ 112. KPMG confirmed that Verizon’s line-loss reports are accurate. See id. Indeed, the number of telephone numbers reported by CLECs as either inaccurate in the line-loss reports or missing from those reports averaged less than 1 percent in 2001. See McLean/Wierzbicki/Webster Decl. ¶ 111; see

exceeded the 95-percent on-time standard for providing customer-usage data and the 98-percent on-time standard for providing wholesale bills to competing carriers in Maine. See McLean/Wierzbicki/Webster Decl. ¶ 102. Verizon also had very few billing adjustments for CLECs from November through January. See McLean/Wierzbicki/Webster Decl. ¶ 103.

Finally, Verizon, the CLECs, and the Maine PUC staff have reached agreement to adopt new performance measurements to ensure that billing performance remains strong going forward. In particular, Verizon will implement two billing measurements that previously were adopted for use in Rhode Island that report on the timeliness of Verizon's acknowledgement and resolution of billing claims. See id. ¶ 104; Guerard/Canny/Abesamis Decl. ¶¶ 13, 66; Pennsylvania Order ¶ 41 & nn.157-58. The PUC also has ordered Verizon to include these measurements as a stand-alone provision in the Maine Performance Assurance Plan, with remedy payments equal to \$200,000 annually. See Guerard/Canny/Abesamis Decl. ¶ 93. Verizon has calculated its performance under these agreed-upon measurements for December and January. Although volumes were low, Verizon's overall performance met the 95-percent benchmark for the billing claim resolution measurement, and Verizon acknowledged all but one billing claim within two days. See id. Att. 5.<sup>67</sup>

#### **6. Technical Support and Change Management.**

Verizon provides CLECs in Maine with the same support mechanisms and processes that it provides in Massachusetts, Rhode Island, Connecticut, Pennsylvania, and New York. See

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also Pennsylvania Order ¶ 52 (finding that Verizon satisfies the checklist where the percentage of working telephone numbers reported as missing or incorrect averaged less than 1 percent).

<sup>67</sup> In contrast, Verizon previously reported its performance in Maine using the business rules for these measurements that were adopted in New York on an interim basis. Those interim measurements were not as well developed as the agreed-upon measurements adopted for use in Rhode Island and Maine, and did not take account of certain factors that do not relate to Verizon's performance. See Guerard/Canny/Abesamis Decl. ¶ 66.

McLean/Wierzbicki/Webster Decl. ¶ 113. In each of these states, the Commission found that Verizon satisfies the checklist. See Massachusetts Order ¶ 102; Rhode Island Order ¶ 1; Connecticut Order ¶ 1; New York Order ¶ 101; Pennsylvania Order ¶¶ 12, 51. Moreover, KPMG has examined Verizon's procedures for establishing and maintaining relationships with CLECs and found them satisfactory in all respects. See McLean/Wierzbicki/Webster Decl. ¶ 114; KPMG MA Report at 495-629.

*First*, Verizon provides CLECs doing business in Maine with the same extensive information, training, and assistance as it provides to CLECs in Massachusetts, Rhode Island, Connecticut, Pennsylvania, and New York. See McLean/Wierzbicki/Webster Decl. ¶ 132. This includes handbooks, technical documentation that Verizon frequently updates and supplements, and numerous training sessions. See id. ¶¶ 132-135. In addition, Verizon offers CLECs in Maine access to the same well-staffed Help Desk that is used by CLECs in Massachusetts, Rhode Island, Connecticut, Pennsylvania, and New York, and that provides a single point of contact for a wide variety of problems that CLECs may encounter. See id. ¶ 138; see also Massachusetts Order ¶ 114 (finding that Verizon "provides the technical assistance and help desk support necessary to give competing carriers nondiscriminatory access to its OSS"); New York Order ¶ 127 (finding that Verizon's training and assistance "provides efficient competitors a meaningful opportunity to compete").

*Second*, Verizon has adopted the same Change Management Process in Maine that it uses across the former Bell Atlantic footprint. See McLean/Wierzbicki/Webster Decl. ¶ 115; see also Massachusetts Order ¶¶ 102-113 (approving Verizon's Change Management Process); Pennsylvania Order ¶ 51 (same); New York Order ¶¶ 111-112 (same). As in those states, Verizon provides CLECs in Maine "with timely change management notification and

documentation.” New York Order ¶ 114; see Massachusetts Order ¶ 104. In fact, from November through January, Verizon met the change management on-time standards for 100 percent of the change confirmations and notifications made during that period. See McLean/Wierzbicki/Webster Decl. ¶ 123; see also Massachusetts Order ¶ 105 (relying on comparable performance); New York Order ¶ 114 (same). In addition, KPMG has examined the Change Management Process and found it satisfactory in all respects. See McLean/Wierzbicki/Webster Decl. ¶ 123; KPMG MA Report at 503-05; Massachusetts Order ¶ 106.

*Finally*, Verizon provides CLECs in Maine with the same testing environment offered to CLECs in Massachusetts and Rhode Island, which allows all competing carriers to test the interaction of their systems and interfaces with Verizon’s pre-ordering and ordering interfaces and OSS. See McLean/Wierzbicki/Webster Decl. ¶ 125; Massachusetts Order ¶ 109 (approving the same testing environment). Moreover, KPMG conducted an extensive review of the CLEC test environment and test procedures, and found that Verizon satisfies every test criterion. See McLean/Wierzbicki/Webster Decl. ¶ 131; KPMG MA Report at 526-39; Massachusetts Order ¶ 111 (relying in part on similar KPMG finding).

### **III. VERIZON IS FULLY IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272.**

As in Massachusetts, Rhode Island, Pennsylvania, New York, and Connecticut, Verizon will provide all services that are subject to the requirements of section 272 through one or more separate affiliates (collectively, the “272 Affiliates”) that comply fully with the requirements of that section and the Commission’s rules.<sup>68</sup> The Commission found in each of those previously

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<sup>68</sup> As required by the Act, the services that will be provided through the 272 Affiliates include any interLATA services originating in Maine that are covered by section 272(a)(2)(B). Under section 271(j), private line and 800 services receive unique treatment for these purposes:

approved states that Verizon “demonstrated that it will comply with the requirements of section 272.” New York Order ¶ 403; Massachusetts Order ¶ 227; Rhode Island Order ¶ 101; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. That finding applies equally here.<sup>69</sup>

**A. Verizon’s Separate Affiliates Comply Fully with the Structural and Transactional Requirements of Section 272(b).**

Verizon’s 272 Affiliates are operated as independent carriers and conduct business with Verizon (and all of its other local BOC affiliates) on an arm’s-length basis. Accordingly, the 272 Affiliates comply with the five requirements of section 272(b): First, the 272 Affiliates will operate independently as required by section 272(b)(1); second, the 272 Affiliates will maintain separate books, records, and accounts; third, the 272 Affiliates will have separate officers, directors, and employees; fourth, the 272 Affiliates will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of Verizon; finally, Verizon will use the same practices to ensure that transactions between it and the 272 Affiliates will be conducted on an arm’s-length basis, reduced to writing, and available for public inspection. See Browning

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any such services that terminate in Maine are deemed to originate there, while such services that originate in Maine are deemed to terminate there. As a result, these types of services are subject to the requirements of sections 271 and 272 on the terminating (rather than the originating) end. While some have claimed that section 271(j) should be construed as an additional restriction, the plain language of that section makes clear that they are incorrect. In reality, section 271(j) reverses the normal presumption and treats the terminating end of 800 and private line services as the originating end — hence, the section 271(j) restriction applies only on the terminating end for these services.

<sup>69</sup> In addition, the first biennial audit, which was conducted by PwC and completed on June 11, 2001, demonstrated that Verizon’s program for complying with the section 272 requirements is comprehensive and effective. See Browning ME Decl. ¶ 6; Browning PA Decl. ¶¶ 32-34. In approving Verizon’s applications for Rhode Island and Pennsylvania, the Commission noted that, although it had not yet completed its own review of the audit results, “no party cites the audit findings as evidence of noncompliance (or even challenges Verizon’s showing generally).” Rhode Island Order ¶ 101 n.319; see Pennsylvania Order ¶ 124 & n.430. Comments on the audit report currently are not due until April 8, 2002. See Accounting Safeguards Under the Telecommunications Act of 1996, Order, CC Docket No. 96-150, DA 02-372 (FCC rel. Feb. 15, 2002).



ME Decl. ¶ 6; Browning PA Decl. ¶ 17 (App. F, Tab 1); Massachusetts Order ¶ 228; Rhode Island Order ¶ 101; New York Order ¶¶ 406, 408-414.<sup>70</sup>

**B. Verizon Will Comply with the Nondiscrimination Safeguards of Section 272(c).**

The Commission's finding in New York, Massachusetts, Rhode Island, Connecticut, and Pennsylvania that Verizon "will comply with section 272(c)(1)" applies equally to Maine. See New York Order ¶ 417; Massachusetts Order ¶ 228; Rhode Island Order ¶ 101; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. Specifically, as in New York, Massachusetts, Rhode Island, Connecticut, and Pennsylvania, Verizon will not discriminate between the 272 Affiliates and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. See Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 20.

For the same reason, the Commission's finding that Verizon has "demonstrate[d] that its BOCs account for all transactions with its section 272 affiliates in accordance with the accounting principles designated or approved by the Commission" also applies to Maine. New York Order ¶ 415; see Massachusetts Order ¶ 228; Rhode Island Order ¶ 101. As in New York, Massachusetts, Rhode Island, Connecticut, and Pennsylvania, Verizon will account for any transactions with the 272 Affiliates as required by section 272(c)(2) and will fully comply with

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<sup>70</sup> As explained below, Verizon also meets the requirements of section 272(c). See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 17539, ¶ 170 (1996). Certain accounting and record-keeping services for each of Verizon's 272 Affiliates are performed by other affiliated centralized services companies that are not separated under section 272. See Browning ME Decl. ¶ 6; see also Browning PA Decl. ¶ 17e. The Commission has made clear, however, that such shared-service arrangements are permitted. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶¶ 168, 178-186 (1996).

the Commission's cost allocation and affiliate transaction rules. See Browning ME Decl. ¶¶ 6, 14; Browning PA Decl. ¶ 27.

**C. Verizon Will Comply with the Audit Requirements of Section 272(d).**

Verizon also "will comply with section 272(d), which requires an independent audit of a BOC's compliance with section 272 after receiving interLATA authorization." New York Order ¶ 416; Massachusetts Order ¶ 228; Rhode Island Order ¶ 101; Connecticut Order ¶ 73 & n.187; Pennsylvania Order ¶ 124 & n.430. As in New York, Massachusetts, Rhode Island, Connecticut, and Pennsylvania, Verizon has mechanisms in place for retaining independent auditors and making records available to verify compliance with the Commission's rules in order to comply with section 272(d). See Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 34.

**D. Verizon Will Fulfill All Requests in Accordance with Section 272(e).**

Verizon will not discriminate in favor of its 272 Affiliates with respect to requests for telephone exchange and exchange access services. See New York Order ¶ 418; Massachusetts Order ¶ 229; Rhode Island Order ¶ 101; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. *First*, Verizon will fulfill requests for telephone exchange and exchange access services from unaffiliated entities within the same time period in which Verizon fulfills such requests for its own retail operations. See 47 U.S.C. § 272(e)(1); Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 21. *Second*, Verizon will not provide any facilities, services, or information concerning the provision of exchange access to its 272 Affiliates unless such facilities, services, or information are made available to other providers of interLATA service on the same terms and conditions. See 47 U.S.C. § 272(e)(2); Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 22. *Third*, Verizon will charge its 272 Affiliates or impute to itself (if using access for the provision of permitted interLATA services of its own) an amount for telephone exchange and exchange access services that is no less than the amount charged to unaffiliated interexchange carriers for such service.

See 47 U.S.C. § 272(e)(3); Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 23. *Fourth*, Verizon will provide interLATA or intraLATA facilities or services to the 272 Affiliates only if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions. See 47 U.S.C. § 272(e)(4); Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 24.

**E. Verizon and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g).**

As in New York, Massachusetts, Rhode Island, Connecticut, and Pennsylvania, Verizon will comply with the requirements of section 272(g) in Maine. See New York Order ¶¶ 419, 421; Massachusetts Order ¶ 228; Rhode Island Order ¶ 101; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. Specifically, Verizon's 272 Affiliates will not market or sell local exchange service provided by Verizon except to the extent that Verizon permits non-affiliated long distance carriers to do the same. See Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 26. Moreover, Verizon will not market or sell interLATA service provided by its 272 Affiliates in an in-region state until Verizon has received authorization to provide such service in that state. See Browning PA Decl. ¶ 25.

Verizon plans to market its services jointly with those of its 272 Affiliates, as permitted by section 272(g)(3), see New York Order ¶ 419; AT&T Corp., 220 F.3d at 632, and to permit the sharing of Customer Proprietary Network Information ("CPNI") with its 272 Affiliates in accordance with 47 U.S.C. § 222 and the Commission's holdings that CPNI is not subject to section 272(c). See Browning ME Decl. ¶ 6; Browning PA Decl. ¶ 20m.<sup>71</sup>

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<sup>71</sup> See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"); Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999) ("CPNI Reconsideration Order"); see also Implementation of the Telecommunications Act of 1996:

**F. Verizon's Compliance Program Will Ensure Satisfaction of Its Obligations Under Section 272.**

Finally, the Commission found that Verizon had “demonstrate[d] that each affiliate has implemented internal control mechanisms to prevent, as well as detect and correct, any noncompliance with section 272.” New York Order ¶ 405; see Massachusetts Order ¶ 228; Rhode Island Order ¶ 101; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. Verizon will continue its compliance efforts, which are designed to ensure compliance with the requirements of section 272. See Browning ME Decl. ¶ 6; Browning PA Decl. ¶¶ 38-40. For example, Verizon has established an Affiliate Transactions Compliance Office (“ATCO”), which centralizes the corporation’s compliance efforts, reviews affiliate transactions, maintains Verizon’s Affiliate Transactions Policy, and conducts employee training on section 272 compliance. See Browning ME Decl. ¶ 6; Browning PA Decl. ¶¶ 39-41.

**IV. APPROVING VERIZON’S APPLICATION IS IN THE PUBLIC INTEREST.**

The Commission has held that “compliance with the competitive checklist is, itself, a strong indicator that long distance entry is consistent with the public interest.” New York Order ¶ 422; see also Arkansas/Missouri Order ¶ 126 n.400 (stating that, where the competitive checklist is satisfied, “barriers to local entry in the local exchange markets . . . have been removed”). As described above, there is no question that the checklist is satisfied in Maine. In addition, the Commission has explained that it “may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest.” New York Order ¶ 423. No such unusual circumstances exist here; to the contrary, the

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Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Clarification Order and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 16506, ¶ 25 (2001) (“our finding . . . that the term ‘information’ in Section 272(c)(1) does not include CPNI remains intact,” because Tenth Circuit vacated the CPNI Order on other grounds).

evidence is overwhelming that Verizon's entry into long distance in Maine is in the public interest.

*First*, the local market in Maine is unquestionably open and there is significant local competition. And, as Verizon's experiences in New York, Massachusetts, and Pennsylvania unambiguously demonstrate, Verizon's entry into the long distance market in Maine will further promote local competition there.

*Second*, mechanisms are in place to ensure that the local market will remain open after Verizon's entry. The Maine PUC has established TELRIC rates for unbundled network elements; Verizon reports its performance in Maine under substantially the same performance standards that are in effect in Verizon's 271-approved States; and Verizon has a comprehensive performance assurance plan in place that parallels the plans adopted in Massachusetts and New York.

*Finally*, Verizon's entry will greatly enhance long-distance competition. Verizon's provision of long distance service in New York, Massachusetts, and Pennsylvania provides empirical proof that Bell company entry into long distance leads to lower prices for long distance service.

**A. Local Markets in Maine Are Open, and Verizon's Entry Will Increase Local Competition Further Still.**

Local markets in Maine are unquestionably open to competition.<sup>72</sup> Throughout Maine there is competition from all types of competitors using all three entry paths provided under the Act. See Torre Decl. Att. 1 ¶¶ 7-21; Brief Att. A, Exs. 1-2.

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<sup>72</sup> Verizon disagrees as a legal matter that the Commission may conduct any analysis of local competition in its public-interest inquiry. Under the terms of the Act, the public-interest inquiry should focus on the market to be entered: the long distance market. The statute requires that "the requested authorization" be consistent with the public interest. 47 U.S.C. § 271(d)(3)(C). The "requested authorization" is to provide in-region, interLATA services. See

Moreover, this competition is all the more impressive because Maine is the third most rural state in the entire country, with more than 55 percent of its population living in rural areas, according to U.S. Census data. See Brief Att. A, Ex. 4.<sup>73</sup> Maine's largest town, Portland, has only 64,000 inhabitants.<sup>74</sup> Besides Portland, there are only seven other towns with a population that exceeds 20,000 (Lewiston, pop. 35,000, Bangor, pop. 31,000, South Portland, pop. 23,000, Auburn, pop. 23,000, Brunswick, pop. 21,000, Biddeford, pop. 20,000, and Sanford, pop. 20,000).<sup>75</sup> Only 14 percent of Maine's population lives in its five largest towns, which is the second lowest ratio among the 15 least populous states in the country. See Brief Att. A, Ex. 3.

The highly rural make-up of Maine is significant, of course, because — as the Commission has recognized — “there may not be significant competition in many high-cost, rural areas.”<sup>76</sup> Rather, local competition — particularly facilities-based competition — typically focuses first “on larger business customers in large cities.”<sup>77</sup> Given that Maine is the third most rural state in the country, and that it lacks even a single major city, means that the degree of competitive entry in Maine further emphasizes the fact that local markets are open.

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id. § 271(b)(1). Therefore, the statute's public-interest focus is clearly on the long-distance market, not the local market. This reading finds strong support in section 271(c)(2)(B), which sets forth an intricate competitive checklist, and section 271(d)(4), which states that “[t]he Commission may not . . . extend the terms used in the competitive checklist.” It is implausible that Congress would have spent countless hours honing the checklist and would also have enjoined the Commission from improving or expanding upon it, but somehow would also have authorized the Commission to add further local competition-related requirements in the context of its public-interest review.

<sup>73</sup> See U.S. Census Bureau, Urban and Rural Population: 1900 to 1990 (rel. Oct. 1995), at <http://www.census.gov/population/censusdata/urpop0090.txt>.

<sup>74</sup> See U.S. Census Bureau, Census 2000 Redistricting Data, at <http://www.census.gov/clo/www/redistricting.html>.

<sup>75</sup> See id.

<sup>76</sup> MAG Plan Order ¶ 6.

<sup>77</sup> UNE Remand Order ¶ 291 n.573.

*First, competitors in Maine are using all three entry paths.* As of December 2001, competitors in Maine already served approximately 50,000 lines, even using conservative estimates. See Torre Decl. Att. 1 ¶ 6, Table 1. Most of these competitive lines are business lines, about one-fifth of which are being served either wholly or partially over facilities CLECs have deployed themselves (including in all cases their own local switches). See id. Competitors are serving approximately 36,000 business lines through resale, and approximately 2,700 business lines through unbundled network element platforms. See id. Competitors also are serving approximately 2,800 residential lines in Maine. See id. Competitors appear to be serving approximately 260 residential lines either wholly or partially over facilities they deployed themselves (including in all cases their own local switches), and approximately 2,500 residential lines through resale. See id.

*Second, competition in Maine comes in all shapes and sizes and is being provided throughout the state.* Maine has attracted competition from a wide variety of CLECs, including some of the biggest CLECs in the country (AT&T and WorldCom), many smaller ones (e.g., OneStar and Lightship Telecom), and various resellers (e.g., Norcom and 1Com). See id. Att. 1 ¶¶ 24, 34, 36-37 & Exs. B, C. There are at least nine competitors providing facilities-based service to business customers in Maine, at least two of which also provide facilities-based service to residential customers. See id. Att. 1 ¶¶ 22-37. In addition, Time Warner Cable selected Maine as the site for the pilot program of its Line Runner service — which is a cable telephony service that uses Internet protocol (“IP”) technology — and is currently offering this service to up to 1,000 customers in the Portland area. See id. Att. 1 ¶ 38. There also are at least two competitors in Maine providing service to business customers through UNE platforms. See id. Att. 1 ¶¶ 25, 33. In addition, there are at least 15 resellers in Maine, including at least eight

carriers reselling service to residential customers. See id. Att. 1 ¶ 21 & Ex. C. Competitors are reselling service in at least 90 percent of Verizon's wire centers in Maine. See id. Att. 1 ¶ 21. Likewise, competitors have obtained collocation across Maine. See id. Att. 1 ¶ 10.

*Third, as actual experience in states with section 271 approval unequivocally proves, granting Verizon long distance relief will prompt still further local competition.* Verizon's entry into the long distance market in Maine will lead to an increase in local competition in the state, just as it has done in other states where section 271 relief has been granted. As the Commission's own Local Telephone Competition report confirms, "[s]tates with long distance approval show [the] greatest competitive activity."<sup>78</sup> In fact, as of 2000, the Commission found that "CLEC market share in New York and Texas . . . are over 135% and 45% higher than the national average, respectively."<sup>79</sup> As of June 2001, CLEC market share in New York and Texas had increased to more than 150 percent and 55 percent higher than the national average, respectively.<sup>80</sup>

This is hardly surprising: a Bell company's imminent or actual entry into the long distance market is the catalyst that finally forces long distance incumbents to enter local markets for mass-market customers.<sup>81</sup> New York was the first state in which a Bell company received

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<sup>78</sup> FCC News Release, Federal Communications Commission Releases Latest Data on Local Telephone Competition (May 21, 2001).

<sup>79</sup> Id.; see also Jerry A. Hausman, Effect of BOC Entry into InterLATA and IntraLATA Service in New York and Texas, at [http://www.iacompetition.org/html/full\\_hausman.html](http://www.iacompetition.org/html/full_hausman.html) ("BOC entry led to a large and statistically significant effect on CLEC shares for local residential service in New York and Texas").

<sup>80</sup> FCC, Local Telephone Competition: Status as of June 30, 2001, Table 6 (Feb. 2002).

<sup>81</sup> As one independent analyst recently has noted, "[w]e also believe that IXC's are using UNE-P primarily to protect long distance revenues, so the decision to use UNE-P is based primarily on where the RBOCs have gained LD entry rather than on the profitability of providing local service itself." Bruce Roberts, Dresdner Kleinwort Wasserstein, Verizon UNE Regulation Under Review, NJ PUC to Rule on VZ LD at 5 (Jan. 8, 2002).



long distance relief, and it was the first state in which AT&T, WorldCom, and Sprint began extensively serving mass-market customers. Texas was the second state in which a Bell company received long distance relief, and it was the second state in which the long distance incumbents began extensively serving mass-market customers. And, in both New York and Texas, the long distance incumbents responded to impending BOC entry by rolling out new, lower-priced bundles of local and long distance services that typically are marketed uniquely to customers in those states.

The long distance incumbents have made significant headway in marketing these bundles. In New York, for example, WorldCom has nearly 440,000 mass-market customers, and AT&T — which began providing service about six months after WorldCom — has about 1 million mass-market customers.<sup>82</sup> And more than 70 percent of the net growth in CLEC lines in New York in 2000 resulted from CLECs serving increasing numbers of residential customers.<sup>83</sup> These mass-market customers are in addition to the literally hundreds of thousands of additional business lines served by AT&T and WorldCom over their own facilities.

Verizon's entry in New York not only has sparked increased competition from the long distance incumbents, but also has sparked added local competition across the board. In the two years since Verizon's entry in New York, the number of local lines served by competitors there has increased by more than 130 percent, including a more than 345-percent increase in UNE-Platform lines and a 90-percent increase in facilities-based lines. See Brief Att. A, Ex. 5. There also has been a more than 340-percent increase in stand-alone loops. See id. Similarly, in the

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<sup>82</sup> See Steve Alexander, Judge Recommends Qwest Be Fined for Impeding Local Service By AT&T, Star Tribune (Feb. 26, 2002); New York PSC, Analysis of Local Exchange Competition in New York State at 17 (2001).

<sup>83</sup> See New York PSC, Analysis of Local Exchange Competition in New York State at 3-4 (2001).

first seven months since Verizon's entry in Massachusetts, CLECs added nearly 24,000 lines per month in that state. See id. Ex. 6. And, in Pennsylvania, CLECs have added more than 28,000 lines per month since the Pennsylvania PUC endorsed Verizon's section 271 application in June 2001. See id. Ex. 7.

**B. Local Markets in Maine Will Remain Open After Verizon Obtains Section 271 Approval.**

Even apart from the marketplace realities demonstrating that the local market not only is open, but irreversibly so, there simply is no realistic risk that Verizon could close the local market or deter further entry. For one thing, Verizon's compliance has been, and will continue to be, closely scrutinized by both competitors and state and federal regulators. For another thing, Verizon is subject to comprehensive performance reporting and performance assurance plans that put a substantial amount of remedy payments at risk annually.

**1. The Regulatory Framework in Maine Strongly Favors Competition.**

As in Verizon's 271-approved states, the process of opening local markets began in Maine even before the Act was enacted, and has continued since.

Most significant here, the Maine PUC has conducted extensive proceedings to evaluate Verizon's compliance with the requirements of the Act, including the competitive checklist. The PUC initially opened a docket (No. 2000-849) to evaluate Verizon's performance in the Fall of 2000. In October 2001, Verizon filed its section 271 application with the PUC in that proceeding. The PUC then conducted an intensive analysis of every aspect of Verizon's checklist compliance down to the most minute detail, all with constant input from competing carriers. The formal record in Docket No. 2000-849 includes submissions totaling thousands of pages from Verizon and seven other principal parties. Verizon also has responded to more than 380 interrogatory requests, questions, and data requests from the PUC staff and CLECs. This

process only recently concluded, with three days of hearings filling more than 1,000 pages of transcript. See App. B, Tabs 17, 20, 23. On March 1, the Maine PUC found that, based on the exhaustive state record, “Verizon meets the statutory requirements of Section 271 relating to opening the local exchange and exchange access markets in Maine to competition.” Maine PUC 271 Letter at 1.

Of course, the PUC’s efforts have not been limited to its section 271 proceeding. Before it established a proceeding to evaluate Verizon’s compliance with the checklist, the Maine PUC conducted additional proceedings to foster local competition and to implement the requirements of the 1996 Act. In particular, as explained above, the PUC has conducted an “active review and modification of [Verizon’s] proposed unbundled network element prices” and has demonstrated its “commitment to TELRIC-based rates.” New York Order ¶ 238; Massachusetts Order ¶ 27. And, as demonstrated above, the outcome of the PUC’s pricing proceedings is entirely consistent with the Act and Commission precedent.

Despite all this, the long distance incumbents will likely attempt to repackage any substantive challenges they may have to the rates adopted by the PUC as a price-squeeze claim, arguing that the difference between the UNE platform rates and the retail rates in Maine is too small for competing carriers to earn a gross profit that is large enough for these carriers to compete for residential customers. Accordingly, they will claim that Verizon’s long distance entry would not be in the public interest. As demonstrated below, these arguments are misguided as both a legal and a factual matter.

As an initial matter, the Commission is under no obligation to analyze whether the UNE rates in Maine could conceivably permit a price squeeze. In Sprint, the court held only that, where the local market is “characterized by relatively low volumes of residential competition,”

the FCC must *either* “pursue the[] price squeeze claim, *or* at the very least explain why the public interest does not require it to do so.” *Id.* at 553, 554 (emphasis added). Indeed, the court strongly hinted that a full-scale price-squeeze analysis is unnecessary. For example, it stated that “the potential scale of a serious price squeeze inquiry” may be incompatible with the “90-day limit [that] constrains the scope of the Commission’s inquiries.” *Id.* at 555-56. The court also indicated that a price-squeeze analysis may be futile, as “the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC.” *Id.* at 556. Moreover, the court’s decision did not purport to alter the long-standing rule that “the [FCC’s] judgment regarding how the public interest is best served is entitled to substantial judicial deference.” *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981).

In Maine, there is ample legal justification for refusing to analyze whether the rates adopted by the PUC could conceivably permit a price squeeze.

*First*, courts have held that a price squeeze can exist only where a firm has monopoly control over an essential input, and its price for that input is “higher than a ‘fair price.’” *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 437-38 (2d Cir. 1945); *see also Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 18 (1st Cir. 1990). These conditions clearly are not met here. The price-squeeze claim advanced by the long distance incumbents relates exclusively to the price of the UNE platform, but the platform is in no way an essential input given that the Act makes available a variety of other means in which to gain access to Verizon’s network. For example, competitors also may serve customers through resale of Verizon’s services, by obtaining stand-alone UNEs from Verizon, by interconnecting their own facilities with those of Verizon, or by some combination of these options.

Indeed, the Act guarantees that competing carriers can *always* avoid a price squeeze by reselling Verizon's services, the rates for which must be set at a discount from Verizon's retail rates. See 47 U.S.C. § 251(c)(4); id. § 252(d)(3) ("a State commission shall determine wholesale rates [for resold services] on the basis of retail rates").<sup>84</sup> And, while the long distance incumbents have argued that the resale discount is somehow inadequate, Congress obviously thought otherwise. Thus, it is not only appropriate to view resale as a viable alternative to the UNE-P, but statutorily required. In any event, as discussed below, real-world experience bears out the fact that resale *is* a viable alternative to UNE-P. Competitors in Maine are serving approximately 38,800 lines — including approximately 2,500 residential lines — through resale. See Torre Decl. Att. 1 ¶ 6, Table 1.

Moreover, there is no question that competitors in Maine may obtain the platform at rates the PUC adopted and found TELRIC-compliant, and that are at (or below) the lower end of the TELRIC range. And the courts have held that where, as here, both wholesale and retail rates are fully regulated, a price squeeze normally will not occur. In Town of Concord, for example, then-Judge Breyer stated that "'normally' a price squeeze will not constitute an exclusionary practice in the context of a fully regulated monopoly." 915 F.2d at 29.

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<sup>84</sup> The Commission's own lawyer made just this point before the D.C. Circuit in the appeal of the Kansas/Oklahoma Order. See Transcript of Oral Argument at 28, Sprint Communications Co. v. FCC, Nos. 01-1076 et al. (D.C. Cir. argued Sept. 17, 2001) (noting that the "pricing provision for resale" under sections 251(c)(4) and 252(d)(3) "directly addresses the price squeeze"); id. at 29 ("competitors can compete with resale even assuming that there is a price squeeze problem on the network element side"). The court did not address this point ostensibly because the Commission did not rely on it in its order. See, e.g., Sprint, 274 F.3d at 555 ("Commission counsel's observation is not a ground for rejecting appellants' claim; we can affirm only on the Commission's reasoning.") (citing SEC v. Chenery Corp., 318 U.S. 80 (1943)).

It is no response to argue that resale does not give a CLEC access to the inputs required to provide long distance service, because that is obviously untrue. CLECs that serve customers through resale are entitled to provide long distance service to those customers, either their own service or that of another provider.

*Second*, unique characteristics of local telecommunications markets in Maine mean that “the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC.” Sprint, 274 F.3d at 556. As described above, Maine is the third most rural state in the entire country, and the Commission and others have long recognized that, because of the high costs of serving such areas, they are unlikely to attract significant levels of local competition. See supra p. 82. Thus, while the absolute amount of residential competition in Maine may be low relative to other states, this is likely caused by the highly rural nature of the state. As the D.C. Circuit correctly anticipated, conducting a price-squeeze analysis here would accordingly be futile because this analysis would never be able to prove that UNE rates, rather than the highly rural nature of Maine, are the factor responsible for the way in which local competition in the state has developed.

*Finally*, the Commission can and should find that conducting a price-squeeze analysis is unnecessary because any policy that attempts to force UNE prices down to the lowest possible level is inconsistent with goals of the Act and the Commission to promote facilities-based competition. As Chairman Powell recently stated: “Facilities-based competition is the ultimate objective” of the Commission’s competition policy.<sup>85</sup> Driving rates down to the lowest possible level would undermine that objective. Indeed, the Commission itself recently noted that its policies might be having just such an effect, and has accordingly sought comment “on whether we should modify or limit incumbents’ unbundling obligations going forward so as to encourage

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<sup>85</sup> Michael K. Powell, Digital Broadband Migration — Part II at 4 (Oct. 23, 2001), at <http://www.fcc.gov/Speeches/Powell/2001/spmcp109.pdf>; see also id. (unbundling policy “should provide incentives for competitors to ultimately offer more of their own facilities”).

incumbents and others to invest in new construction.” UNE Triennial Review NPRM ¶ 24.<sup>86</sup>

And facilities-based CLECs have expressed the very same concerns.<sup>87</sup>

In any event, claims of a price squeeze in Maine cannot possibly be sustained as a factual matter. In Maine, the gross profit margins available to competitors are substantial. For example, comparing the wholesale rates for a UNE platform in Maine with the revenues from Verizon’s Local Package (in which customers receive unlimited local calling, unlimited directory assistance, and three vertical features) yields a gross profit margin of approximately \*\*\* percent. See Dinan/Garzillo/Anglin Decl. ¶ 58. Moreover, the gross profit margin for the actual “average” Maine retail customers is only slightly lower — approximately \*\*\* percent.

See id.

The Commission also may rely on the fact that the combined loop and non-loop rates in Maine are substantially lower than the comparable rates recently adopted in New York, where carriers have entered the local market aggressively and are serving more than 1.5 million mass-market customers using platform lines. See id. ¶ 56. Indeed, AT&T has just recently announced that it is “launching an aggressive marketing and advertising campaign” to promote its local

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<sup>86</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, CC Docket Nos. 01-338, et al., FCC 01-361 (rel. Dec. 20, 2001) (“UNE Triennial Review NPRM”).

<sup>87</sup> See, e.g., Ex Parte Letter from Kevin M. Joseph, Vice President, Allegiance Telecom, to Magalie Roman Salas, Secretary, FCC, CC Docket Nos. 96-98, 96-262, 97-146, Att. at 2 (Feb. 2, 2001) (expanding “the availability of the UNE-P” “threatens to harm those CLECs that have built their own facilities and do not need to rely on the UNE-P to serve customers”); Ex Parte Letter from Kim Robert Scovill, Vice President and General Counsel, Choice One Communications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98, at 1 (Mar. 12, 2001) (“Choice One’s business experience demonstrates that new entrants can provide service to small business customers . . . without the need to rely on unbundled local switching purchased from an incumbent LEC. . . . We are unaware of any reason why another carrier could not replicate it using unbundled loops and self-deployed switches, even in second and third tier urban markets. The Commission’s rules governing unbundled local switching should reflect this fundamental fact.”).

service in New York, where it already serves about 1 million local customers.<sup>88</sup> Thus, to the extent that carriers have chosen to enter the local market in New York, but not in Maine, it clearly is not due to the level of wholesale rates, which are already at the low end of the TELRIC range, but instead is due to other factors not within Verizon's control. Accordingly, there is no factual basis on which to find that a price squeeze is somehow to blame for the failure of competitors to enter local markets in Maine more aggressively than they have chosen to up to this point.

**2. Verizon Is Subject to Comprehensive Performance Reporting and Performance Assurance Mechanisms.**

Verizon also is subject to extensive performance reporting requirements that, like the comparable requirements in New York, Massachusetts, Rhode Island, and Connecticut, allow competitors and regulators alike to identify and investigate potential problems before they pose a risk to competition. And it also is subject to a comprehensive, self-executing performance assurance mechanism that provides still further incentives to provide the best wholesale performance possible.

Performance Measurements. Verizon reports its Maine performance under an extensive set of measurements that are virtually identical to the latest version of the measurements developed in the New York PSC's collaborative carrier working group process and approved by the New York PSC, the Massachusetts DTE, and the Connecticut DPUC. See Guerard/Canny/Abesamis Decl. ¶¶ 13-14; New York Order ¶¶ 438-439; Massachusetts Order ¶ 243 & n.776; Connecticut Order ¶ 76 & Apps. B, C; see also Pennsylvania Order ¶ 131. Those measurements also, with one minor difference, are the same as those that were in effect in Rhode

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<sup>88</sup> See AT&T News Release, AT&T Launches Aggressive New York Marketing Campaign (Mar. 4, 2002).



Island at the time the Commission approved Verizon's section 271 application in that state. See Rhode Island Order ¶ 5; Guerard/Canny/Abesamis Decl. ¶ 13.<sup>89</sup>

These standards require Verizon "to achieve excellent wholesale service quality" that "go[es] well beyond the Checklist requirements," "exceed[ing them] in specificity and degree."<sup>90</sup> As the Commission has found on four separate occasions, these measurements allow regulators and competitors alike to monitor all aspects of Verizon's wholesale performance. See, e.g., New York Order ¶ 431. With one minor exception, Verizon also is subject to the same performance standards — either retail analogs or benchmarks — in Maine as in New York, Massachusetts, Rhode Island, and Connecticut.<sup>91</sup> Verizon's performance is measured against these standards in order to ensure that it provides service to CLECs in "substantially the same time and manner" as the service it provides to its own retail operations. Id. ¶¶ 44, 431.<sup>92</sup>

Performance Assurance Plan. Verizon is subject to a self-executing Performance Assurance Plan ("Plan") in Maine that parallels the plans in effect in New York, Massachusetts, Rhode Island, and Connecticut. Indeed, the Plan in effect in Maine is substantially identical to

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<sup>89</sup> As in Rhode Island, Verizon will begin reporting its billing performance using the versions of two new billing measurements in effect in that state, rather than the interim versions of those measurements that the New York PSC approved in its October 2001 Order. See Guerard/Canny/Abesamis Decl. ¶¶ 13, 66.

<sup>90</sup> Petition of New York Telephone Co. for Approval of its Statement of Generally Available Terms and Conditions, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan at 31, Case Nos. 97-C-0271 & 99-C-0949 (NY PSC Nov. 3, 1999); Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Evaluation of the New York Public Service Commission at 3-4, CC Docket No. 99-295 (FCC filed Oct. 19, 1999) ("NY PSC Evaluation").

<sup>91</sup> The one exception is that the Maine PUC extended the time Verizon has to return an order confirmation notice or a reject notice for resale and UNE specials orders that require a facilities check from 72 hours to 5 business days. See Guerard/Canny/Abesamis Decl. ¶ 13.

<sup>92</sup> PwC concluded that Verizon's procedures and systems to capture and report its performance measurement results for Maine are the same as those used in Massachusetts and Rhode Island. See Guerard/Canny/Abesamis Decl. ¶ 69.